IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

THURSDAY, THE 22ND MARCH 2007 / 1ST CHAITHRA 1929

RCRev..No. 101 of 2007()

RCA.18/2005 of ADDL.DISTRICT COURT-I,MAVELIKKARA
RCP.4/2003 of MUNSIFF COURT,KAYAMKULAM

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REVISION PETITIONERS/APPELLANTS/COUNTER PETITIONER

1. SABUJA,W/O.LATE BASHEER,SHANAVAS MANZIL,
   KAYAMKULAM MURI,KAYAMKULAM VILLAGE.

2. LAILA BASHEER,D/O BASHEER, -DO-

3. BEEMA BASHEER, -DO-

BY ADV. SRI.C.P.UDAYABHANU

RESPONDENTS: RESPONDENTS/RESPONDENTS/PETITIONERS

1. RAHELAMMA CHACKO,PULLITHOTTATHU VEEDU,
   KAYAMKULAM MURI,KAYAMKULAM VILLAGE.

2. BENCY @ P.C.GEORGE, -DO-

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 22/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.R.RAMAN & ANTONY DOMINIC,JJ.

R.C.REV.NO.101 OF 2007

Dated this the 22nd day of March, 2007

JUDGMENT

Raman,J.

Tenants are the revision petitioners. They are faced with an order under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act. The respondents/landlords filed the petition for eviction on the ground of bona fide need inter alia contending that the building belongs to the landlords, which was let out to one Basheer, the husband of the lst revision petitioner and father of other revision petitioners on a monthly rent of Rs.60/- on 16/12/1980 and he was in possession of the same. Thereafter the rent has been enhanced to Rs.350/- per month. Though it was contended that there was arrears of rent and eviction was sought under Section 11(2) (b) of the Act, the same was dismissed. As regards the plea of bona fides, it was case of the lst respondent herein that the 2nd respondent herein (2nd petitioner in the rent control petition) is depending on her and he wants to start a stationery business for earning his livelihood. There is an out-house behind the petition schedule building and adjacent to their house where the 2nd petitioner in the rent control petition is conducting a courier service and

also a STD booth. Since it has no road frontage, that building is not suitable for his proposed stationery business. There is no other building in the possession of the landlords for that purpose. She also contended that the tenants are not depending on the income from the business conducted in the petition schedule building. The revision petitioners on the other hand contended that the bona fide need alleged is not true and correct and that allegation that the 2nd respondent herein was depending on the lst respondent also is not correct, as he is having his own business. He was in Gulf country for a long time and thereafter he is doing some business including courier service and STD booth in the building in his possession. He can do the stationery business also in the same premises. The 2nd respondent/2nd petitioner was examined as PW-1 and Exts.A1 to A4 were marked on their side. No oral evidence was adduced on the side of the revision petitioners/respondents and Exts.B1 to B6 were marked on their side. After evaluating the evidence on record, the court below found that there was no arrears of rent and also found that the bona fide need alleged by the petitioners (respondents herein) is genuine and that the tenants are not entitled to get the benefits under the 2nd proviso to Section 11(3) of the Act and allowed the application under Section 11(3) of the Act. In the

absence of any appeal against the order dismissing the claim under Section 11(2)(b) of the Act, the same has become final. As regards the order of eviction under Section 11(3) of the Act, the tenants preferred an appeal before the Appellate Authority. The Appellate Authority, even after re-appreciation of the evidence in the matter, did not accept the contention of the tenants/appellants. It found that the bona fide need as found by the Rent Control Court is correct and that the tenants are not entitled to the benefit under the second proviso to Section 11(3) of the Act. The order of eviction passed by the rent control court was confirmed by the Appellate Authority, against which this revision petition is filed.

2. The learned counsel for the petitioner contended that the building where the 2nd respondent herein is conducting STD booth itself is sufficient for the purpose of conducting stationery business and at any rate the disadvantage as pleaded by the 2nd respondent that there is no road frontage with the existing building where he is conducting the STD booth is equally applicable to the petition schedule building also. But we find that there is no evidence adduced in this regard. As a matter of fact, the petitioners did not mount the box to give evidence in the matter. In the circumstances, this plea will not arise for consideration out of the

order now passed by the court below. The bona fide need as alleged having been concurrently found by both the courts below, we do not find any reason to disagree with such finding. As regards the benefit of the second proviso also there is a concurrent finding that there is no materials placed to reach a different conclusion. In the circumstances, the order passed by the Rent Control Court as affirmed by the Appellate Authority does not suffer from any irregularity, illegality or impropriety warranting interference under Section 20 of the Kerala Buildings (Lease and Rent Control) Act.

3. The revision lacks merits and the same is dismissed.

4. At the stage of the proceeding the learned counsel for the petitioners prays for a reasonable time to surrender vacant possession of the building. Since the petitioners are conducting some business in the tenanted premises, we think that a reasonable time can be granted to give vacant possession. Accordingly we direct that the execution of order of eviction passed by the court below will stand deferred for a period of three months from today, i.e until 22/6/2007 on the following conditions:

1) Petitioners shall surrender vacant possession of the building on or before 22/6/2007.
2) They shall pay the entire arrears of rent as on today

if any within one month from today before the execution court.

3) They shall continue to pay the monthly rent for use and occupation of the building until they surrender vacant possession of the building.

4) They shall not induct any strangers into the premises.

5) They shall file affidavit before the execution court within one month from today undertaking to surrender vacant possession of the building on or before 22/6/2007 and to comply with the other conditions also. If they fail to comply with all the above conditions, it will be open to the landlords/respondents to seek eviction of the tenants/petitioners forthwith.

P.R.RAMAN,
Judge.

ANTONY DOMINIC,
Judge.

kcv.